

1 Beverly Thorp  
2 c/o Box 2070  
3 Sunnyvale CA 94087  
4 FC009  
5  
6

7 UNITED STATES DISTRICT COURT  
8 Northern District of California  
9 San Jose Division  
10  
11

**FILED**

JUN 10 2008

Richard W. Wieking  
Clerk, U.S. District Court  
Northern District of California  
San Jose

12  
13 **Plaintiffs:**

14  
15 Beverly Thorp  
16

17 v.

Case No. C 08 – 01449 JF

18  
19 **Defendant:**

20  
21 Judge Robert Attack, et al.  
22 Superior Court of Santa Cruz  
23 701 Ocean St.  
24 Santa Cruz CA 95060  
25

26 Does 1 through 99  
27  
28  
29

Rebuttal and Objections To  
Defendant's Motion to Dismiss

30 **Rebuttal and Objections To Defendant's Motion To Dismiss**  
31  
32  
33

34 I, Beverly Ann Thorp, a flesh-and-blood woman, a human being, an Authorized  
35 Representative and Agent for BEVERLY THORP, sui juris, Ingenuitas juris et de jure, a  
36 State National citizen and NOT a Federal Zone citizen. Under a special appearance of  
37 Propria Persona, Without Prejudice, under the Uniform Commercial Code, UCC 1-207,  
38 UCC 1-103, and UCC 3-402, have first hand knowledge of the facts stated herein, and  
39 being competent in mind and body to testify, declare and affirm the facts stated herein are  
40 true correct, complete and admissible as evidence, in all material fact, not misrepresented  
41 and are made pursuant to the Laws of the Union of States of America and the California  
42 Republic.

1 **THIS REBUTTAL** has become necessary, because of the **ABSURD** and **FALSE**  
2 **STATEMENTS** made by the Defendant in his Motion to Dismiss and Memorandum of  
3 Points and Authority, which I, Beverly Thorp, cannot let stand as true and correct.

4  
5 **Statement of Fact**  
6

7 On 14 March 2008, a Summons and Complaint was filed and sent by Certified Mailed to  
8 the Defendant Judge Attack and Does 1 through 99 in conformity with California and  
9 Federal law.

10  
11 The basic statutes granting federal courts subject-matter jurisdiction are contained in 28  
12 USC § 1331 and § 1332, which was clearly called out in the Plaintiff's Complaint on page  
13 3 line 5. The jurisdiction of the Court was also invoked under Article III, Section 2 of the  
14 United States Constitution, and Amendment V and VII of the Constitution of the United  
15 States.

16  
17 The Defendant, the claimant, claims the Court does not have subject matter jurisdiction.  
18 Being the claimant, the Defendant, is always bound to prove what he has claimed; the  
19 **BURDEN of PROOF lies on the Defendant** to PROVE this Court does NOT have subject  
20 matter jurisdiction, which they have FAILED to do.

21  
22 Ideally, the Plaintiff would like to see this Court Disqualify the alleged Judge Attack and all  
23 of his judgments and rulings, but this will not happen directly. This Court does have the  
24 power and the authority to prosecute and the subject matter jurisdiction to deal with Robert  
25 Attack's illegal courtroom antics of Breach of Oath, Breach of Duty, Prejudice, Bias, being  
26 a Trespasser, and violating the Plaintiff's Due Process Rights. There is sufficient grounds,  
27 legal and factual, to make this happen.

28  
29 The Plaintiff has clearly stated an actionable claim for relief in the Summons and Complaint  
30 where the Plaintiff seek money and legal punitive damages be awarded to her against the

1 Corrupt, Bias, and Prejudice individual who is Masquerading as a judge and calls himself  
2 judge, Robert Attack.

3  
4 Obviously, the Defendant's attorney has NO idea of the status of the System & Services  
5 Technologies, Inc. v. Beverly Thorp, Santa Cruz County Superior Court Case No. CV  
6 155983. This case ended in 2007 and a final judgment was rendered in 2007 and is  
7 closed. **The Plaintiff is NOT seeking this Court review of the above stated case.** The  
8 Plaintiff is seeking this Court review of the Improper, Prejudice, Bias behavior, and the  
9 Violation of Federal law by the Defendant. Secundum æquum et bonum – According to  
10 what is right and just.

11  
12 All of this has boiled down to the Defendant now being in DEFAULT for FAILURE to  
13 answer the Plaintiff's Summons and Complaint. Any argument outside subject matter  
14 jurisdiction is **MUTE**, as the Defendant is now in DEFAULT, pure and simple, and by tacit  
15 consent has agreed completely with all of the statements and charges made in the  
16 Plaintiff's Summons and Complaint.

17  
18 The Defendant's silence stands as consent, tacit approval, tacit procurement, and everything  
19 stated herein stands and is accepted as true and correct, for the declarations of facts and  
20 conclusions being established as fact and the Plaintiff's Summons and Complaint stands  
21 as final judgment in this matter. Silence shows consent. 6 Barb. [N.Y.] 2B, 35. Qui non  
22 negat, fatetur. He who does not deny, admits. Trayner, Max. 503.

23  
24 The Defendant did not deny what was said, therefore, he **admits to the TRUTHFULNESS**  
25 of the statements in the Plaintiff's Summons and Complaint.

26  
27 It appears the Defendant's attorney has a standard boiler plate response already prepared  
28 to send out when there is an opportunity. Unfortunately, his boiler plate response has been  
29 misapplied and in appropriately applied. It appears the Defendant's Motion to Dismiss is  
30 an effort on the Defendant to cover-up the fact, the Defendant SCREWED-UP and FAILED

1 to file an answer to the Plaintiff's Summons and Complaint, which has now moved the  
2 Defendant into a condition of a PERMANENT DEFAULT.

3  
4 The Defendant's attorney has filled many pages with stuff about state court cases which  
5 has NO bearing on this case or action. He has filled his Motion and Memorandum with a  
6 lot of filler and meaningless noise and is trying to divert attention away for the basic issue,  
7 **this Court has subject matter jurisdiction and the Defendant is in PERMANENT**  
8 **DEFAULT.**

9  
10 The court has the authority to hear what is brought before it by statue, and the paperwork  
11 has invoke the jurisdiction of the court.

12  
13 Anyone who violates Federal Law or the Constitution is guilty of a federal crime and  
14 Federal Court has jurisdiction over those violations.

15  
16 "We the People are the rightful master of both Congress and the Courts - not to overthrow  
17 the Constitution, but to overthrow the men who pervert the Constitution." A b r a h a m  
18 Lincoln

19  
20 When it comes to the law there are only two governmental bodies which citizens must  
21 concern themselves with, one of them is in Washington D. C and the other is in the state  
22 capitol where our respective state legislatures convene.

23  
24 The United States Constitution and the California Constitution both require all judges, both  
25 State and Federal, to take an Oath of office before the individual can fill the position. These  
26 "officials" are suppose to take an oath of office to defend the Constitution and uphold the  
27 laws of the United States. When an individual FAILS to take their required Oath and file  
28 it, the individual has committed a BREACH of OATH and a BREACH of DUTY. Both of  
29 these crimes are State and Federal crimes. Both of these crimes are under the Subject  
30 Matter Jurisdiction of this Federal Court, as they are violations of the Constitutions and  
31 Constitutional Law. An individual who has committed these crimes and claims to be a judge

1 is NOT a judge. The individual is only MASQUERADING as a judge. Is the judge who acts  
2 without an Oath and a properly set Court anything but a common criminal?

3  
4 An individual who is MASQUERADING as a judge CANNOT have a properly set court and  
5 he/she has/is violating the Due Process Rights and has TRESPASS against each and  
6 every individual who has stood in front of this Masquerading individual (Who is no more  
7 than a common criminal.). A **Trespasser** is defined in Black's Law Dictionary (6th Edition)  
8 as one who has committed unlawful interference with one's person, property, or rights. By  
9 NOT having a Properly Set Court violates an individual's Due Process Rights. Butz v.  
10 Economou 438 U.S. 478, 98 S. Ct. 2894, 57 L. Ed. 2d 895, (1978); Maritime Commission  
11 v. South Carolina States Ports Authority 535 U.S. 743, 122 S. Ct. 1864, 152 L. Ed. 2d 962,  
12 (2002).

13  
14 Now let me see if I understand this correctly, this alleged Judge has:

- 15
- 16 1. Breached his Oath of office,
- 17 2. Breached his Duty,
- 18 3. Masquerading and Impersonating a judge,
- 19 4. Violated peoples Due Process Rights,
- 20 5. Operating an Improperly Set Court,
- 21 6. Is a Trespasser,
- 22 7. Is Prejudice,
- 23 8. Is Biased,
- 24 9. Is in Permanent Default, and.
- 25 10. Should have to face Impeachment Charges.
- 26

27 A Citizen cannot be forced to give up his/her Rights in the name of a regulation or for the  
28 expedience of the Court. These Rights are called Unalienable for a reason.  
29

1 If an individual cannot be placed in a position of being forced to surrender Rights in order  
2 to exercise a privilege, how much more must this maxim of law, applies when the individual  
3 is simply exercising (putting into use) a Right?

4  
5 *"The statute [or judge] which would deprive a Citizen of the rights of person*  
6 *or property, without a regular trial, according to the course and usage of the*  
7 *common law, would not be the law of the land."* Hoke vs. Henderson, 15 NC  
8 15.

9  
10 *"We find it intolerable one Constitutional Right should have to be*  
11 *surrendered in order to assert another."* Simons vs. United States, 390 US  
12 389.

13  
14 Violations of the law cannot stand under a judge, police power, due process, or regulation,  
15 but must be exposed as oppressive and one which has been misapplied to deprive the  
16 Citizen of Rights guaranteed by the United States Constitution and the State Constitutions.

17  
18 *"The Right of the state to impede or embarrass the Constitutional operation*  
19 *of the U.S. Government or the Rights which the Citizen holds under it, has*  
20 *been uniformly denied by the Supreme Court."* McCulloch vs. Maryland, 4  
21 Wheat 316.

22  
23 *"The state cannot diminish Rights of the people."* Hurtado vs. California, 110  
24 US 516.

25 and ...

26 *"Where rights secured by the Constitution are involved, there can be no rule*  
27 *making or legislation which would abrogate them."* Miranda vs. Arizona, 384  
28 US 436, 491.

29 and ...

1           *"The claim and exercise of a Constitutional Right cannot be converted into*  
2           *a crime."* Miller vs. U.S., 230 F. 486, 489.

3           and ...

4           *"There can be no sanction or penalty imposed upon one because of this*  
5           *exercise of constitutional Rights."* Snerer vs. Cullen, 481 F. 946.

6  
7           Indeed, the very purpose for creating the state under the limitations of the Constitution was  
8           to protect the rights of the people from intrusion, particularly by the forces of the States and  
9           the Federal Government.

10  
11           *"The courts are not bound by mere form, nor are they to be misled by mere*  
12           *pretenses. They are at liberty – indeed they are under a solemn duty – to*  
13           *look at the substance of things, whenever they enter upon the inquiry*  
14           *whether the legislature has transcended the limits of its authority. If,*  
15           *therefore, a statute purported to have been enacted to protect ... the public*  
16           *safety, has no real or substantial relation to those objects or is a palpable*  
17           *invasion of Rights secured by the fundamental law, it is the duty of the courts*  
18           *to so adjudge, and thereby give effect to the Constitution."* Mulger vs.  
19           Kansas, 123 US 623, 661.

20           and ...

21           *"It is the duty of the courts to be watchful for the Constitutional rights of the*  
22           *citizen and against any stealthy encroachments thereon."* Boyd vs. United  
23           States, 116 US 616.

24  
25           The courts are "*duty bound*" to recognize and stop the "*stealthy encroachments*" which  
26           have been made upon the Citizen's Right to travel and to use the roads to transport his  
27           property in the "*ordinary course of life and business.*"

28  
29           Further, the court must recognize the Right to Due Process is part of the Liberty of which  
30           a Citizen cannot be deprived without specific cause and without the "*due process of law*"

1 guaranteed in the **Fifth Amendment**. This was not attempted in an outright action, but in  
2 a slow, meticulous, calculated encroachment upon the Citizen's Right.

3  
4 This position must be accepted unless the Defendant can show his authority for the  
5 position the "*use of Due Process in the ordinary course of life and business*" is a privilege.  
6 To rule in any other manner, without clear authority for an adverse ruling, will infringe upon  
7 fundamental and basic concepts of Constitutional law. This position, a Right cannot be  
8 regulated under any guise and must be accepted.

9  
10 *"Disobedience or evasion of a Constitutional Mandate cannot be tolerated,*  
11 *even though such disobedience may, at least temporarily, promote in some*  
12 *respects the best interests of the public."* Slote vs. Examination, 112 ALR  
13 660.

14 and ...

15 *"Economic necessity cannot justify a disregard of Constitutional guarantee."*  
16 Riley vs. Carter, 79 ALR 1018; 16 Am. Jur. (2nd), Const. Law, Sect. 81.

17 and ...

18 *"Constitutional Rights cannot be denied simply because of hostility to their*  
19 *assertions and exercise; vindication of conceded Constitutional Rights*  
20 *cannot be made dependent upon any theory it is less expensive to deny*  
21 *them than to afford them."* Watson vs. Memphis, 375 US 526.

22  
23 *"No public policy of a state can be allowed to override the positive*  
24 *guarantees of the U.S. Constitution."* 16 Am. Jur. (2nd), Const. Law, Sect.  
25 70.

26  
27 Even so, "*public policy*" cannot abrogate this Citizen's Right in the ordinary course of life  
28 and business.  
29



1 No one in their right mind voluntarily surrenders complete liberty and accepts in its place  
2 a set of regulations, administered by fickle and corrupt individuals, agencies, and judges.

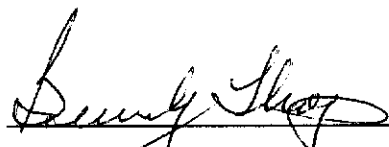
3  
4 *"The people never give up their liberties but under some delusion."* Edmund  
5 Burke, (1784)

6  
7 Further, Beverly Thorp saith naught.

8  
9 Without Prejudice, UCC 1-207, UCC 1-103, & UCC 3-402

9 June 2008

10 Beverly Thorp, an Authorized Representative and Agent

11  
12 

13 \_\_\_\_\_, In Propria Persona Sui Juris  
14 A Free Woman, Sovereign American, with Constitutional Rights intact UCC § 3-402 (b)(1)  
15 De Jure Soli, Jus Sanguinis, Coronea, Teste Meipso.

16  
17  
18  
19 Reserving All Rights, Giving Up None.

20 Notice to agent is notice to principal. Noted to principal is notice to agent.

21 All Rights Reserved (UCC1-308)

**PROOF OF SERVICE / DELIVERY**

(CCP § 413.10 – 416.90)

I am a citizen of the California Republic. I am over the age of eighteen years. I am able and willing to testify to the facts stated herein.

I served the following document(s) on all appropriate parties in this action by placing a copy of the said document(s) in a sealed envelope, with postage attached, and deposited it with the U.S. Postal Service.

• **Rebuttal and Objections To Defendant's Motion To Dismiss** (FC009)

X I caused such envelope to be deposited in the mail with the U.S. Postal Service. The envelope was mailed with postage thereon fully prepaid. Mailed to each of the following:

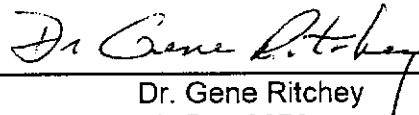
Judge Robert Atack, 701 Ocean St., Santa Cruz CA 95060.  
Judge Paul Burdick, 701 Ocean St., Santa Cruz CA 95060.  
Troy Overton, 455 Golden Gate Ave. Ste 11000, San Francisco CA 94102

\_\_\_ The Proof of Service / Delivery signed by the authorized courier is on file and is available upon demand.

I am readily familiar with the practice of collection and processing correspondence for mailing. The above document(s) were deposited with the U.S. Postal Service within the time frame prescribed by law.

I declare, under penalty of perjury of the laws of the State of California the foregoing is true and correct.

9 June 2008

  
\_\_\_\_\_  
Dr. Gene Ritchey  
c/o Box 2070  
Sunnyvale CA 94087